fore in my view the award must be made within three months from the date the arbitrator entered on the reference except in those cases where the time for making the award has been enlarged by the order of the court under section 10. The arbitration agreement in this case is also silent about the time for making the award. I therefore find in this case that the arbitrator had no power to enlarge the time for making the award arbitrarily.

The other point for the court to consider is whether the award made after a lapse of more than five months after entering on the reference as extended by the arbitrator arbitrarily amounts to a nullity. Under the heading: "Grounds for opposing application" at paragraph 111 page 50 of volume 2 of *Halsbury's* Laws of England, 3rd Edition, it is stated that:—

"In answer to an application for leave to enforce an award, the respondent may set up that the award is a nullity. . . ."

In my view the power of the arbitrator under the Ordinance in this case extends only to a period of three months after entering on the reference by reason of clause (3) of the First Schedule read together with section 10 unless time was extended under section 10. In this case no step was taken for extension of time under section 10 even though this was pointed out by counsel for the respondent to the arbitrator long before the award was made. In view of these circumstances, I find that at the time when the award was made the arbitrator had no jurisdiction to exercise and therefore the award is a nullity.

For these reasons the application is dismissed with costs.

Application dismissed.

Solicitors: *D.A. Devadason; Shearn, Delamore & Co.*

TANG LEW KENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) May 13, 1968]
[Perak — Criminal Appeal No. 11 of 1968]

Evidence — Witness — Incriminatory statement — Criminal proceedings — Evidence Ordinance, 1950, s. 132.

Evidence — Hearsay — Interpreter — Statement made to president of sessions court through interpreter — Interpreter not called — Admissibility of.

This was an appeal by the appellant against his conviction on a charge of being in possession of samsu on which the excise duty leviable by law had not been proved to have been paid, an offence under section 73(1)(a) and punishable under section 73(1)(i) of the Excise Act, 1961. In an earlier trial against another person charged with the possession of the same samsu, the appellant appeared as a defence witness and made a statement which incriminated him. There was evidence of the appellant's reluctance to make the statement until the defence counsel assured him that he came under the protection of section 132 of the Evidence Ordinance, 1950. The statement of the appellant was made in Hokkien, a language which the president of the sessions court did not understand. It was interpreted by an interpreter into English and recorded in its English form. The English form was produced at the trial of the appellant and relied upon as proof of his possession of the samsu. The interpreter was not called to give evidence. On the question of the admissibility of the record of the appellant's testimony:

Held, allowing the appeal: (1) section 132 of the Evidence Ordinance did not preclude the record of the appellant's testimony from being admissible against him. The section excludes an incriminatory statement made by a witness from being admissible in a subsequent criminal proceedings against him only where the witness had been compelled by the court to make such statement. This is clear from the language of section 132(2) of the Ordinance. In this case no compulsion was exercised by the court;

(2) the testimony of the appellant was recorded by the president of the sessions court from what was told to him by the interpreter. As the interpreter himself was not called, the record of the appellant's testimony was hearsay and inadmissible.

R. v. *Attard* (3) followed.

Cases referred to:—

(1) *Toh Ah Lok and Mak Thim* v. *R.* [1949] M.L.J. 54.

(2) *Wong Kok Keong* v. *R.* [1955] M.L.J. 13 at p. 16.

(3) *R.* v. *Attard* (1959), 43 Cr. App. R. 90.

CRIMINAL APPEAL.

Soo Wai Sun for the appellant.

Eusoff bin Chin (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an appeal against the appellant's conviction in the sessions court at Teluk Anson on a charge of being in possession of 2 gallons of samsu, on which the excise duty leviable by law amounting to $39.04 had not been proved to have been paid, an offence under section 73(1)(a) and punishable under section 73(1)(i) of the Excise Act No. 34 of 1961. The sentence was a fine of $400, in default of 6 months' imprisonment.

At the trial, reliance for proof of possession was placed on the statement made by the appellant at the trial of one Beh Sai Tick, who was charged with possession of the same illicit samsu. At this earlier trial, the appellant appeared as a defence witness, and in the course of his evidence said:—

"At the time I gave accused the tins, I knew that the tins did not contain petrol. It contained samsu. This samsu was made by my father. My father told me to take it to Ah Choon. I was waiting for a bus to come when I met accused."

Beh Sai Tick was acquitted and discharged. On the appellant's admission, the deputy public prosecutor considered that there was a case against him and he had the appellant charged.

The then president of the sessions court, Teluk Anson, who tried Beh Sai Tick was called

as a prosecution witness to produce the original notes of evidence recorded by him of what the appellant said. In the notes was recorded the passage cited above. In the course of his evidence, the president of the sessions court made the following admission:—

"The accused was a bit reluctant to give this piece of evidence. The defence counsel explained to him the contents of section 132(2) of Evidence Ordinance. The accused then volunteered to give the evidence."

He was not cross-examined on his evidence.

The main ground of appeal lodged against the conviction is that the notes of evidence of the appellant's testimony in the earlier trial were not admissible against him as, by his reluctance to give evidence until assured of the protection at law, he came under the protection of section 132 of the Evidence Ordinance, 1950.

Now section 132 of the Evidence Ordinance is in these words:—

"132. (1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind, or that it will establish that he owes a debt or is otherwise subject to a civil suit at the instance of any Government in the Federation or of any other person.

(2) No answer which a witness shall be compelled by the court to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

(3) Before compelling a witness to answer a question the answer to which will criminate or may tend directly or indirectly to criminate such witness, the court shall explain to the witness the purport of sub-section (2) of this section."

In support of his argument, learned counsel for the appellant relied on the passage on pages 2688-2689 of Vol. III of *Woodroffe's and Ameer Ali's* Law of Evidence (11th Edition) under the rubric "shall be compelled to give" relating to section 132 of the Indian Act.

Section 132 of the Indian Evidence Act provides that:—

"132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

It will be seen that it is not strictly *in pari materia* with the local section, but even under the Indian law, it is clear on the authorities cited by the learned authors and by *Sarkar* in his Law of Evidence (10th Edition) at page 1105 that the compulsion must come from the court before the protection arises. Any doubt that may be entertained in the matter will be removed on reading the local section, especially sub-section (2), which specifically refers to compulsion by the court. In the circumstances of the case under appeal, it could not be said that any compulsion was exercised by the court. The appellant was a defence witness, not a prosecution witness. His apparent reluctance was overcome not by compulsion by the court but by counsel for the defence explaining to him the meaning of section 132 of the Evidence Ordinance. It would appear that the learned counsel was wrong in his interpretation to the appellant of the meaning and purport of the said section 132, but his mistake is not a mistake of the court and does not and cannot extend the protection to the appellant where the statute does not so provide. It is, in any event, not within the competence of counsel for the defence to provide witnesses with the protection afforded by section 132 of the Evidence Ordinance. Further, the learned president of the sessions court's evidence that thereafter the appellant volunteered the evidence was not challenged. To my mind, the failure to challenge this testimony and the use of the word "volunteer" must mean that the appellant's apparent show of reluctance or hesitation was not overcome by compulsion on the part of anyone, much less the court.

Further, there is, in my view, a still more valid defect in the argument of learned counsel for the appellant. The question, the answer to which the witness seeks the protection of the court under section 132 of the Evidence Ordinance, must be "a question as to any matter relevant to the matter in issue in any . . . criminal proceeding." Now, the relevant issue in the prosecution against Beh Sai Tick was the issue of possession of the illegal samsu, not ownership. Beh Sai Tick was found in possession of the illegal samsu and was accordingly charged with such possession. The issue of the ownership of the goods was totally irrelevant, as even though Beh Sai Tick was proved not to be the owner, he could nevertheless be convicted so long as the legal possession of the goods was proved to be in him. In the events that happened, Beh Sai Tick was acquitted and discharged. The reason for his acquittal is not on the record before me, but I was advised and it was confirmed by learned counsel for the appellant, who was also counsel for the defence in that case, that the court held, in acquitting Beh Sai Tick, that while the prosecution had proved Beh Sai Tick to have the power of disposal of the goods and conscious possession, it failed to prove that Beh Sai Tick knew the nature of the thing he carried and for the moment possessed, and possession could not be said to

have been proved. The authority relied on was obviously *Toh Ah Loh and Mak Thim* v. *R.*[1] Consequently, I am of the opinion that the question put to the appellant was not caught by section 132(1) of the Evidence Ordinance.

The other ground of appeal was that if the evidence of the appellant was properly admissible against him, there was even on it no evidence of possession. With respect, I do not agree. The appellant in his evidence admitted his knowledge that it was samsu, he showed that he had in him the power of disposal of the thing possessed, and he was conscious of his possession, satisfying all the three ingredients of possession in the test laid down in *Toh Ah Loh & Mak Thim's* [1] case.

The question, however, is whether the evidence of the appellant, which is admissible in evidence, was properly admitted. No objection was taken on this point, either at the trial in the court below or on appeal, but clearly inadmissible evidence does not become admissible by reason of the failure of counsel to object at the relevant time, and an appellate court must disregard all such evidence: *Wong Kok Keong* v. *R.*[2] The record of appeal discloses that the evidence of the appellant was given in Hokkien, a language which I must take to be unknown to the president of the sessions court who heard the case and who is of the Malay race. The appellant's evidence was interpreted into English and recorded in English and in its English form was produced at the trial without the interpreter being called to give evidence of the questions put to the appellant and the answers given by him to the court. On the authority of *R.* v. *Attard*,[3] I must hold, therefore, that as far as the evidence adduced at the trial went, the statement produced by the prosecution was hearsay and inadmissible. Without this evidence, there is no evidence against the appellant.

The conviction of the appellant is, therefore, quashed and the fine, if paid, is to be refunded to him.

Appeal allowed.

CHONG FOOK KAM & ANOR. v. SHAABAN & ORS.

[F.C. (Barakbah L.P., Suffian & MacIntyre F.JJ.) May 13, 1968]

[K.L. — Federal Court Civil Appeal No. X.31 of 1967]

Tort — False imprisonment — Arrest without warrant — Extent of power of police officer to arrest without warrant — Criminal Procedure Code (Cap. 6), s. 23(i)(a) — Police Ordinance, 1952, s. 41(1).

Constitutional Law — Fundamental liberty — Arrest of suspect — Where investigation cannot be completed within 24 hours — Magistrate's order for detention — Malaysia Constitution art. 5(3) & (4) — Criminal Procedure Code (Cap. 6), s. 28 — Courts Ordinance, 1948, s. 107(1) — Police Ordinance, 1952, s. 41(1).

This was an appeal from the decision of the High Court reported in [1967] 2 M.L.J. 54. The respondents, police officers, had arrested the appellants, the driver and attendant of a lorry without a warrant. The arrest was as a result of investigations carried out by the respondents on receiving a complaint of a hit-and-run road accident. The lorry which the first appellant was driving answered the description of the lorry involved in the accident. The appellants were brought before a magistrate the following day and a detention order was obtained. As there was insufficient evidence to connect them with the accident, the appellants were later released. They brought an action for damages for false imprisonment. The action was dismissed. The learned judge held that the arrest was lawful as there was sufficient information available to the respondents at the time of the arrest to give rise to a reasonable suspicion that the appellants had committed a seizable offence under section 304A of the Penal Code or section 34A of the Road Traffic Ordinance.

Held: even assuming that the appellants were the persons responsible for the accident, there was no evidence to prove that they were guilty of rash or dangerous driving. No *prima facie* offence under section 304A of the Penal Code or under section 34A of the Road Traffic Ordinance had been disclosed at the time of the arrest. The respondents were therefore not justified in arresting the appellants without a warrant.

FEDERAL COURT.

S. P. Seenivasagam (*D. P. Xavier* with him) for the appellants.

Ajaib Singh (Deputy Public Prosecutor) for the respondents.

Suffian F.J.: We allowed this appeal. Now I give my reasons.

On the night of the 10th of July, 1965, Kanniah was driving car No. BC 6912 towards Semantan estate in Mentakab. He had four passengers on board. At Batu 2, Jalan Karak, he passed an oncoming lorry with a trailer laden with timber. As he passed the lorry, a log fell off it on to his car. One of the passengers in the car was killed.

When he arrived in Mentakab the same night, he lodged a report (exhibit D.1) which translated reads:—

"At 9.15 p.m. on 10th July, 1965, I was driving motor car No. BC 6912. I was returning to Semantan estate. In the car I had four friends returning to Semantan estate. When I arrived at Batu 2, Jalan Karak, in front of me was a lorry with a trailer loaded with timber sawn and unsawn. When we passed each other in the opposite direction, some timber fell off the lorry and hit my windscreen. It hit my friend and my uncle. I immediately stopped my car and saw that my uncle was unable to speak. I took them to hospital at Mentakab. When I arrived there, I found that my uncle had died and the others were injured. I cannot recognize the lorry nor its number because it was night time and the lorry did not stop, it went straight on towards Mentakab town. The time of the incident was about 9.25 p.m. on 10th July, 1965. This is my report. The name of the dead person was Govindan and of the injured person Persamay."

Inspector Shaaban bin Hussien (the first defendant) was the area inspector in Mentakab. I will call him the inspector. At about 10.15 p.m. he was informed of the report and went to